

UNITED STATES DISTRICT COURT
for the
District of Massachusetts

JOSE MARIA DECASTRO, an individual) Case No. 1:22-cv-11421
Plaintiff,)
v.) **MOTION TO CORRECT RECORD OR**
JOSHUA ABRAMS, an individual, et al.,) **ALTERNATIVELY TO RECONSIDER**
Defendants.) **MOTION TO TRANSFER VENUE,**
) **PRELIMINARY INJUNCTION**

MOTION TO CORRECT RECORD OR ALTERNATIVELY TO RECONSIDER

MOTION TO TRANSFER VENUE, PRELIMINARY INJUNCTION

I, Jose DeCastro, Plaintiff hereby move this Honorable Court to correct its record under Fed. R. Civ. P. 60(a) and record the Plaintiff's Voluntary Dismissal and notice as filed before the Defendant's answers to my complaint, which is true and in the interest of justice. In the alternative, to reconsider my Motion to Transfer Venue (#52 in the docket), and move for preliminary injunction.

In support of this Motion, I hereby incorporate the attached Memorandum in Support.

Dated: November 10, 2022

Respectfully submitted,

/s/ Jose DeCastro
Jose DeCastro
1258 Franklin St.
Santa Monica, CA 90404
chille@situationcreator.com
(310) 963-2445
Pro Se

UNITED STATES DISTRICT COURT
for the
District of Massachusetts

JOSE MARIA DECASTRO, an individual) Case No. 1:22-cv-11421
Plaintiff,)
v.) **PLAINTIFF'S MEMORANDUM IN
JOSHUA ABRAMS, an individual, et al.,) SUPPORT OF MOTION TO
Defendants.) CORRECT RECORD OR
) ALTERNATIVE MOTIONS**
)
)
)

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO CORRECT
RECORD OR ATLERNATLIVEY TO TRANSFER VENUE, PRELIMINARY
INJUNCTION**

Under Fed R. Civ. P. 41(a)(1)(A)(i), a Plaintiff has the absolute right to dismiss, an action that is has brought, before the opposing party serves either an answer or a motion for summary judgement.

I filed a Notice of Voluntary Dismissal (“NVD”) prior to being served with answers or motions for summary judgement. There was an apparent error that I am completely not at fault for, which the court is responsible for investigating and resolving in the interest of justice. The court doesn’t appear to have made an investigation, so I am moving this court to do so.

The Court has said that I did not explain why I did not refile the document until it appeared. I was never notified that filings would immediately appear in the electronic record, and in fact my experience was the opposite. I had previously e-filed documents where I was notified that it was too late to file and that the document would be filed later. I expected the NVD to appear on

Monday, and was surprised when the Defendant's documents, that had been filed after mine, showed before mine. Non-party attorney, Jon Rietveld, who has been reporting on this case, even made a video suggesting his followers wait "until the dust settled", that clerks don't typically work on the weekend, and it might take some time to file all the documents, and that they might not appear in order. I say this simply to point out that I am not the only person that thought this was how e-filing worked. If I had known that if a document didn't immediately appear, that I needed to keep filing until it did, I would have followed that process. I also believe that we would have had many duplicate documents filed, due to the delays that I have witnessed in the past. I'm requesting an evidentiary hearing to bring witnesses as to how a reasonable person might expect e-filing to work, as well as to talk to your IT people after they've investigated and to discover electronic evidence of my submittal.

The Court has said that I submitted no evidence to show that I drafted my NVD before the NEF of the answers. I declare that I did and include **Exhibit 1** which is the metadata on the PDF for the NVD that I prepared and is a true and correct copy. In **Exhibit 2**, I submit to you metadata from my computer showing my submission of the e-file, although your IT department likely has better data. I collected this metadata and it is a true and correct copy. a YouTube video that I published that began streaming at 2022-11-06T17:42:46+00:00 titled in part "... Lawsuits are withdrawn," and published at <https://www.youtube.com/watch?v=fSYwoLfHCNg>. I collected this metadata and it is a true and correct copy. Defendant Katherine Peter ("Peter") published a YouTube video that began streaming at 2022-11-07T02:00:13+00:00 titled in part "Chille's Sad Breakup..." and published at <https://www.youtube.com/watch?v=NISnWPioMQk>. In the video, Peter says, "I know why you're all here right now. I do, uh. You're thinking that we're going to have some sort of big update. Um, none whatsoever. I'm treating it as I, you

know, as of right now 9:02, sorry 9:03 PM, on Sunday the sixth of November, I am still being sued, and I am treating it as such.” I collected the metadata and transcribed this and it is true and correct. In **Exhibit 3**, I include email notices including the NVD (#56 in the record), sent to the opposition prior to the NEF of the answers, which I prepared and is a true and correct copy. In **Exhibit 4**, I include an email reply from Defendant Abrams’s attorney of record, replying to that email, to show proof of delivery. I prepared this document, and it is a true and correct copy. I also submit the Defendant’s answers in the record at #53 and #54, which were obviously hastily prepared. They both offer permissive counter complaints that contain state claims, do not establish jurisdiction or authority for relief, or offer anything other than general denial. Either the Defendant attorneys have suddenly gotten dumb, or these were hastily prepared, which I offer as evidence as to their notice of dismissal and their obvious desire to try to beat me in a race of time to file, which they obviously won due to their continued exercise of their position and manipulation of this Court that is prejudicial against me and to keep their claims in the Court where they continue to exercise that position. Further, when I filed my Motion to Transfer Venue (“MTV”) (#50), this Court suggested that I dismiss this case instead (#51). Although I considered asking this court to reconsider my MTV, it seemed more proper to file the dismissal instead of questioning the Court’s legal analysis. The series of events in context makes it obvious to expect that an NVD was my next move. Finally, I have a text message chain between me and my legal team where we discuss NVD strategy, the preparation of the NVD, and the successful filing of it, which I will submit in the evidentiary hearing or in my reconsideration of this motion.

I have raised concerns in my MTV, but you replaced my valid complaints with the assumption of a “change of heart”. The fact is that I didn’t know that it was my right to file this

action in California, and as soon as I learned that, and realized how difficult it would be to bring this to trial due to witnesses and parties being in California, I attempted to move it. Although I understand your reading the motion in the light most favorable to the non-moving party, I ask this court to reconsider the MTV. In the defamation video by Defendant Peter, she cites judicial record in Los Angeles County, and alleges having spoken to witnesses in the same county. I have given YouTube 14 day notice of intent to sue, and when I add them to this complaint, this case will no longer be diverse. I don't expect YouTube to stipulate to this remaining in this district. Since YouTube did not keep their promise to enforce policies, I believe they are partially responsible for some of the damages under a claim of promissory estoppel. Not including them will prejudice the Defendants. Additionally, I am obviously being prejudiced when participating in this Court. I am a *pro se* plaintiff that should be guaranteed some leeway, in the interest of justice, and it is obvious that the Defendants took advantage of notice of my NVD to try to sneak in completely unfinished answers and counter complaints. I am being prejudiced due to the error by the electronic filing system, and the Defendants are gaining an unfair advantage. This is not the first time that I've been prejudiced against. An affidavit that I had couriered to the Court last month has still not been filed. The Clerk still has not responded to my inquiries into what format to submit videos for the Court's review. Documents that I file don't always show up, and the Defendants always seem to be able to get their documents filed first. To me it looks like either magic or collusion.

I will take necessary actions to preserve my right to appeal any action that interferes with my absolute right to dismiss. Proceeding, while preserving my appeal to voluntary dismissal, due to error by the court, and against a *pro se* plaintiff, will give me an advantage if I lose on the merits.

At least one clear case of defamation *per se* is a story published by Peters on YouTube. The story is titled “Chille DeCastro Once Sold The Date Rape Drug and Might Be A Snitch, Will Sue us for Mocking Him”. The story was published May 22, 2022 at <https://www.youtube.com/watch?v=85YEdqvbgX4>. The title itself is actionable libel and Peter clearly shows in the video accompanying the story that it is not true. The alleged judicial record that she admits is not from a reliable source and in fact not a judicial record, shows an arrest, not a conviction, and not the date rape drug, which is Rohypnol, a.k.a. “roofie”. I transcribed this metadata from my computer and it is a true and correct copy.

Due to my likelihood to win this on the merits, I request a preliminary injunction for the removal of the forementioned story and accompanying video from public availability, as well as protection from further defamatory statements.

I also will proceed to my earlier motion for sanctions for spoliation and the jury instruction for that as well as jury instructions appropriate for the unavailability of out of state witnesses that the defense will struggle to produce due to its defamatory case allegedly involving Los Angeles witnesses.

I have yet to amend my complaint, and it could easily be amended to dismiss my action, and it would break precedent to try to sanction or find a *pro se* filer in contempt for doing so, especially in the interest of justice. Additionally, the responses provided are obviously hastily prepared and are not a great loss, as the counter complaints will not survive even the simplest attacks on jurisdiction. Since the answers were just filed and lack any substance, this Court is not invested in this case. It will save the Defendants time and money for this action to be dismissed rather than to proceed only to lose an appeal later so with that in mind, I pray for this Court, in the interest of justice and the forementioned reasons, to investigate and locate the missing NVD

filings and correct the record, but alternatively to transfer venue, grant a preliminary injunction.

I declare under penalty of perjury, that the foregoing is true and correct.

REQUEST FOR HEARING

Pursuant to L.R. 7.1(d), I hereby request an evidentiary hearing and/or oral argument – at the Court's election – on the issues presented in this motion.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

The court has waived this local rule for the remainder of this action.

Dated: November 10, 2022

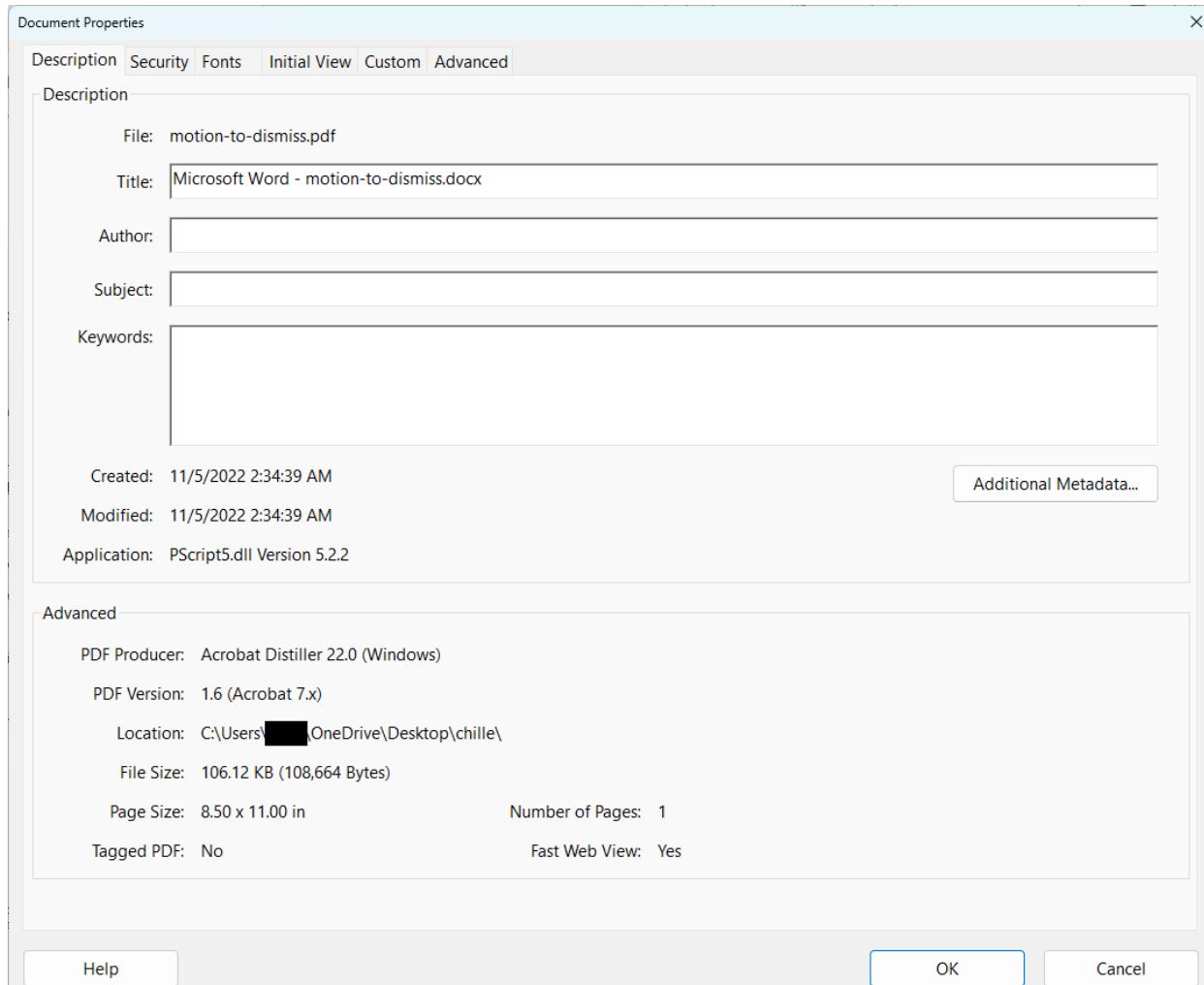
Respectfully submitted,

/s/ Jose DeCastro
Jose DeCastro
1258 Franklin St.
Santa Monica, CA 90404
chille@situationcreator.com
(310) 963-2445
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

EXHIBIT 1



☰ History

EXHIBIT 2



Sunday, November 6, 2022

<input type="checkbox"/>	12:42 PM	Channel content - YouTube Studio	studio.youtube.com	⋮
<input type="checkbox"/>	12:42 PM	Video details - YouTube Studio	studio.youtube.com	⋮
<input type="checkbox"/>	12:41 PM	Stream customization - YouTube Studio	studio.youtube.com	⋮
<input type="checkbox"/>	12:38 PM	(152) YouTube	www.youtube.com	⋮
<input type="checkbox"/>	12:38 PM	Let's End Hate and Show the Love & Fo...	www.youtube.com	⋮
<input type="checkbox"/>	12:38 PM	Video details - YouTube Studio	studio.youtube.com	⋮
<hr/>				
<input type="checkbox"/>	12:17 PM	ecf.mad.uscourts.gov	ecf.mad.uscourts.gov	⋮
<input type="checkbox"/>	12:17 PM	CM/ECF - USDC Massachusetts - Ve...	ecf.mad.uscourts.gov	⋮
<input type="checkbox"/>	12:15 PM	CM/ECF - USDC Massachusetts - Ve...	ecf.mad.uscourts.gov	⋮
<input type="checkbox"/>	12:15 PM	CM/ECF - USDC Massachusetts - Ve...	ecf.mad.uscourts.gov	⋮
<input type="checkbox"/>	12:15 PM	CM/ECF - USDC Massachusetts - Ve...	ecf.mad.uscourts.gov	⋮
<input type="checkbox"/>	12:15 PM	CM/ECF - USDC Massachusetts - Ve...	ecf.mad.uscourts.gov	⋮
<input type="checkbox"/>	12:13 PM	CM/ECF - USDC Massachusetts - Ve...	ecf.mad.uscourts.gov	⋮
<input type="checkbox"/>	12:13 PM	CM/ECF - USDC Massachusetts - Ve...	ecf.mad.uscourts.gov	⋮
<input type="checkbox"/>	12:12 PM	CM/ECF - USDC Massachusetts - Ve...	ecf.mad.uscourts.gov	⋮
<input type="checkbox"/>	12:12 PM	PACER: Login	pacer.login.uscourts.gov	⋮
<input type="checkbox"/>	12:12 PM	Court CM/ECF Lookup PACER: Feder...	pacer.uscourts.gov	⋮
<input type="checkbox"/>	12:11 PM	pacer login - Google Search	www.google.com	⋮



Delete Lawz <deletelawz@gmail.com>

EXHIBIT 3

re: Withdrawn**Delete Lawz <deletelawz@gmail.com>**

Mon, Nov 7, 2022 at 5:04 AM

To: "Wish, Benjamin" <bwish@toddweld.com>, Josh Abrams Accountability For All All <josha1487@gmail.com>

Bcc: Discussing Law <discussinglaw@gmail.com>

re: We have set specific stipulations. Please, see that you follow them or you may face future litigation.

Regards,
Jose M. DeCastro

 **motion-to-dismiss.pdf**
107K



EXHIBIT 4

PAGE 1

Delete Lawz <deletelawz@gmail.com>

RE: Withdrawn

Joshua Garick <Joshua@garicklaw.com>
To: Delete Lawz <deletelawz@gmail.com>

Mon, Nov 7, 2022 at 9:06 AM

Mr. DeCastro:

Since your notice of dismissal was not properly served (see Fed. R. Civ. P. 5), it is ineffective and you can only dismiss the claims now with a stipulation of dismissal signed by all parties. See Fed. R. Civ. P. 41(a)(1)(A)(ii). Mr. Abrams would agree to dismissal if you dismiss claims as to him with prejudice. While you would be abandoning claims against Mr. Abrams, that would still leave you free to pursue claims against Ms. Peter, who I suspect is the person you really have an axe to grind with here.

Let me know if you will agree, and we can file a stipulation of dismissal without delay.

Thanks,

Josh

From: Delete Lawz <deletelawz@gmail.com>
Sent: Monday, November 7, 2022 11:18 AM
To: Joshua Garick <Joshua@garicklaw.com>
Subject: Fwd: Withdrawn

Apologies Mr. Garick.

I was sending this to you and I accidentally sent it to Josh.

Forgive me for my error

Jose M DeCastro

Sent from my iPhone

Begin forwarded message:

From: Delete Lawz <deletelawz@gmail.com>
Date: November 7, 2022 at 8:04:49 AM GMT-5
To: "Wish, Benjamin" <bwish@toddweld.com>, Josh Abrams Accountability For All All <josha1487@gmail.com>
Subject: re: Withdrawn

re: We have set specific stipulations. Please, see that you follow them or you may face future litigation.

Regards,
Jose M. DeCastro

EXHIBIT 4

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